The transparency labyrinth in Argentina

By María Baron[1]

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> *Jorge Luis Borges, Obras completas I, p. 162*
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> *"Argentines, as opposed to Americans from the North and to almost all Europeans, do not identify themselves with the State. That can be due to the general fact that the Argentine State is an unconceivable abstraction; the truth is that the Argentine is an individual, not a citizen."*
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> *Jorge Luis Borges, Complete Works I (translated)*

As in the myth of Sysiphus, condemned to push a heavy rock uphill just to see it roll down time and time again, for the last three years the Argentine Congress has represented a steep mountain for those who advocated and pushed bills on access to information and the regulation of lobbying activities.

Advocates directed their efforts to highlighting the importance of access to public information for a better performance of the institutions, but they also had a clear and concrete objective: the approval of a bill that would regulate that right. Nevertheless, all of the proposals before Congress stalled, due to the lack of political will that neither the Congressional debates nor media pressure could overcome.

But three years of hard work were not in vain. The campaign "More Information, Less Poverty"[2] contributed during all of that period to create real public awareness of the urgent need to democratize public information – a concept that not long ago was practically unknown but is now a widespread complaint.

The right to access to public information is a constitutional right according to the international treaties on human rights incorporated to the Argentine Constitution with the 1994 reform. Therefore many analysts believe that it is not an issue to be regulated by decree[3] and that it would be more appropriate to do it through a law.

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[2] For more information on this initiative, see www.cippec.org/espanol/transparencia

[3] A decree is an Executive Order.

The bills presented to Congress were crafted through a novel mechanism in Argentina of "participative elaboration of norms" and were implemented by the Anticorruption Office[4]. This means that opinions from different sectors of civil society, and members of the private and public sectors that could be affected by these regulations were brought to the table. These sectors participated in seminars and agreed to a "mother bill" to be introduced before Congress on behalf of the Executive Branch[5]. This mechanism was conceived to give the bill the strength to differentiate it from the other 12,000 bills introduced each year in the legislature.

This "mother bill" arrived in Congress, where unfortunately stumbles and falls prevented it from turning into law. The first of these reverses was the opposition - in some cases implicit and explicit in others- of one or another political party or of particular legislators within the parties. But within the frame of a crisis that threatened to bring down the whole system, the political and economic emergencies set the pace for the last three years in Argentina.

The first efforts towards implementation

Because of the many failures, after President Néstor Kirchner took office in May 2003, the *Subsecretaría para la Reforma Institucional y Fortalecimiento de la Democracia (*Agency for Institutional Reform and Democracy Strengthening*)* decided to take many existing initiatives, created within the Anticorruption Office and moved forward by civil society, and put them all together in a Presidential Decree. President Kirchner signed the decree on December 3, 2003.

This decree, number 1172/2003, establishes general regulations for public hearings for the Executive Branch, as well as the Interest Management (lobby), the Participative Elaboration of Norms, the Access to Public Information for the Executive Branch, Open Meetings of Regulating Entities for Public Services, Registration Forms, Registration and presentation of opinions and proposals, and free Internet access to the daily edition of the Official Bulletin of the Argentine Republic[6].

It is too early to determine if Decree1172/03 will be successful. Some of its regulations, such as those related to Access to Information (an effective tool against the "culture of secrecy" in our institutions), establish a deadline of 90 working days to adapt the administration to the norm before its implementation. According to this deadline (it took one year in Mexico) this section of the decree could be applied by the end of April or early May 2004.

With such a tight schedule, the efforts to adapt the administration and its members to this new model constitute an enormous challenge. The *Subsecretaria* is developing an

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[4] Through this process the following bills were elaborated: Interest Management (February-March 2001), Access to public information (June-July 2001); amendments to the National Ethics Law (April 2003); Protection of whistleblowers, informants and witnesses of acts of corruption (February-July 2003).

[5] The Anticorruption Office is part to the Ministry of Justice, Security and Human Rights.

[6] The Official Bulletin is a daily newspaper where new norms are required to be published.

implementation plan with great effort and no budget at all, and even though there is a lot of skepticism among public officials, the decision of the authorities seems to be firm.

At the beginning phase the *Subsecretaria* will advance from nine different approaches, the first of which will be the elaboration of "guidelines." These should facilitate the correct application and compliance with the tools included in the many regulations mentioned in the decree (public hearings, participative elaboration of norms, interest management, access to information and open meetings of regulating entities). These guidelines, for example, explain some points to be considered when calling for a public hearing or how the registration of the hearings for interest management should be published.

A second approach is the coordination with all of the Ministries of the Executive, a bringing together of the administration itself. The liaison offices of each ministry have designated a person with enough responsibility and hierarchy to undertake these specific duties, and a surrogate to replace them in the event of their absence. This model follows the steps of the one implemented in the United States, through the establishment of Freedom of Information Act officers, in charge of the implementation of this law within each government agency.

Since February 2, 2004, these officers have been holding weekly training workshops where they are briefed on framework of this new regulation. They also discuss and clarify details of its implementation in the different agencies. They conduct question and answer sessions to clarify any questions they may have and they further maintain the option of having individual meetings for specific questions, which may arise during that week.

Strikingly, the *Subsecretaria* herself, Marta Oyhanarte, and her whole team are present during these workshops. The simple fact of her presence marks a difference with all of the other initiatives that were proposed within the Executive Branch. In many cases these initiatives have been reduced to the wording of the regulation, more than the changing of public servants. Leadership also contributes to the creation of a general positive sentiment, nonexistent until now among officials, as one of the only antidotes capable of fighting the high level of skepticism towards the publicity of acts of government.

A third aspect of the action plan refers to the modes of action and communication between the *Subsecretaria para la Reforma Institucional y Fortalecimiento de la Democracia* and the Anticorruption Office, since this is the enforcement agency and the office that receives complaints. This is a positive measure because the Anticorruption Office has many years of implementing the national anticorruption law (n° 25.188), which requires, among other things, to receive, analyze and, according to each case, report irregularities or conflicts of interest in the financial statements of officers of the Executive Branch.

The fourth point concerns the communication strategy to raise awareness within the community as a whole regarding the importance of the measures implemented and the

existing mechanisms. This phase is extremely important because it will be the basis for the quantity and the form of the information requests that civil society will formulate to the administration. The communication campaign includes publicity spots, advertisements in major newspapers and posters and will focus on the understanding of the decree as a "transparency code", developing the benefits that this regulation will bring.

In addition, a compliance monitoring system is being developed with the collaboration of the Anticorruption Office. The first priority of this system is the development of a map of the State and the universe that is obliged to implement the norm. The monitoring will reach all of the regulations as well as the mode of application and the necessary actions in each case.

The sixth approach is the creation of an information and consultation system to channel requests and concerns from government agencies as well as from members of civil society (hotline and Internet). This will ease the work of government officials and interested people from the public.

There is also another initiative, the seventh one, regarding a training program undertaken with the collaboration of universities, the National Institute of Public Administration and civil society organizations. Prestigious personalities from abroad will be invited along with United States government officials. Also, civil society organizations will be invited to participate in order to establish cooperation strategies that would smooth the process of implementation of the norm.

The last aspect is related to the coordination with the Government Administrator's network[7], with the aim of assisting in the implementation of the executive order. This guarantees a rapid allocation of highly trained human resources and a flexible structure functional to the specific needs of the work to be done.

Some conclusions

The most significant challenge at implementation time is that the administration works according to changing rules, without unified criterion methodology, and with successive incorporations of personnel that is therefore forced to coexist with previous "geological layers" of the public administration. All this occurs under the constant threat of wage cuts and voluntary retirement plans, which turn the institutional culture into a tangle of colliding interests, practices, generations, partisanship and budgets. In this sense, the new openness norm may well end up merely as one more in a long string.

Besides, the Executive Branch has taken big steps towards transparency, mostly during the nineties -although more by approving legislation rather than by enforcing any of them. Some examples are laws like n° 24,667 on the Procurement Office[8] in 1992; n°

[7] Government Administrators are a group of six highly qualified individuals that work in different temporary projects in any agency or department of the federal administration.
[8] The translation in Spanish is Procuración del Tesoro de la Nación.

24,156 on Financial Administration and Control Systems in 1992; n° 24,759 which ratified the Inter American Convention against Corruption in 1997; n° 25,188 National Ethics law in 1999; n° 25,164 on Public Office in 1999; and the replacement of the Public Ethics National Office by the Anticorruption Office in 1999.

However, the other branches of government have not shown similar interest. An example of this is that Congress has not fully implemented the National Ethics law nor created the National Commission on Ethics it foresees[9]. The Judiciary, once that law was passed in 1999, ruled that it did not apply within the structure of the courts, and the law has not been enforced since.

Thus, it is worth pointing out three matters related to the implementation of Decree 1172/03, the first of which is the structural importance its correct implementation would have for the Argentine state. And this, once again, is related to the need for creating a culture of transparency, which a norm by itself cannot create. So, the path chosen seems the right one.

Secondly, and as a consequence of what was previously stated, the next steps should be slow, which brings up two more challenges: incentives must be created so that a culture of change gains pace within the administration, with a fluid out-going communication as well, so the whole process gains credibility.

Finally, the lack of economic resources is a major barrier, which must be removed in the medium term (if not the short term). The norm does not contemplate funding, therefore each area was forced to assign its implementation to employees already burdened with other tasks.

In a country where 50 % of the population lives under the poverty line, opponents of transparency will always argue that it seems much too expensive an objective. But corruption, it is worth remembering, is even more costly.

[9] The senate agreed to a request of a group of citizens to obtain copies of senators' financial statements in April 2002 through the passing of a "senatorial decree", but this does not mean the institution is complying with the provisions stated by the National Ethics Law.